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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ANAHITA SARDAB,

Plaintiff and Appellant,

v.

ACME BAIL BONDS COMPANY et al.,

Defendants and Appellants.

G050554

(Super. Ct. No. 30-2012-00601004)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Frederick P. Aguirre, Judge. Affirmed.

Law Offices of Brendan Pegg and Brendan Pegg for Defendants and Appellants.

MHM Law Group and Michael H. Moghtader for Plaintiff and Appellant.

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After a bench trial the court determined plaintiff and appellant Anahita Sardab was the prevailing party. Defendants and appellants Acme Bail Bonds Company (Acme) and Continental Heritage Insurance Company (Continental; collectively defendants) appeal that ruling, claiming the court abused its discretion in making this determination without an explanation for the ruling and further that they prevailed on all of plaintiff's causes of action.

Plaintiff also appeals, arguing that because she was the prevailing party, she was entitled to attorney fees, relying on provisions in a trust deed.

We conclude the court did not abuse its discretion in determining plaintiff was the prevailing party, but there is no basis for her to recover attorney fees. Consequently, we affirm the judgment.

### **DEFECTS IN BRIEFS**

Before we get to the substance of the appeal, we must address the parties' violations of the court rules. California Rules of Court, rule 8.204(a)(2)(C) requires an appellant to "[p]rovide a summary of the significant facts." Plaintiff failed to do so. Defendants' statement of facts was sparse.

Further, California Rules of Court, rule 8.204(a)(1)(C) requires "any reference to a matter in the record" to be supported by a citation to its location. These citations must be included in both the summary of facts and the argument portion of the brief even if duplicative. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16.)

Although both parties included a few record references (plaintiff has one and defendants have two), almost the entirety of their briefs were devoid of any such references, thereby improperly requiring the court to do counsel's work. (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738 ["It is neither practical nor appropriate for us to comb the record on [a party's] behalf"].) We will generally

disregard facts and arguments not supported by adequate citations to the record. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294.)

### **FACTS AND PROCEDURAL HISTORY**

Since both parties seem to agree as to the facts and based on the almost complete lack of record references, we take many of the facts from the judgment.

Plaintiff and her husband (Husband) owned a piece of real property (Property), holding title as “Husband and Wife, as Joint Tenants.” After Husband was arrested he executed a note and trust deed secured by the Property in favor of Continental to secure a \$150,000 bail bond. Husband signed a second note and trust deed secured by the Property in favor of Continental to secure a \$9,500 bail bond. Both trust deeds (Trust Deeds) were recorded and indexed. Plaintiff did not sign either of the notes or Trust Deeds.

Thereafter, plaintiff filed for dissolution of her marriage and received the Property as part of the judgment.

When Husband failed to appear in court the \$150,000 bond was forfeited. Continental then recorded a notice of default and election to sell<sup>1</sup> and sought payment of \$159,000.

Plaintiff filed an action against defendants for quiet title, cancellation of instruments, and negligence and sought an injunction to prevent foreclosure of the Trust Deeds, cancellation of the Trust Deeds, and damages. She alleged the Trust Deeds were not properly executed or recorded. She pleaded Husband had no right to execute them without her consent, and she did not receive any consideration.

Plaintiff further alleged defendants knew or should have known Husband had no right to encumber the Property without her consent. Plaintiff alternatively pleaded

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<sup>1</sup> This document does not appear to be part of the record and the judgment does not mention it. However a minute order notes it was admitted during trial.

that if the Trust Deeds were found to be a lien against the Property, it was only as to the one-half Husband owned at the time he executed the notes and Trust Deeds.

In their answers, defendants essentially denied the allegations, pleaded numerous pro forma affirmative defenses, and sought costs and attorney fees.

After a bench trial the court ruled both Trust Deeds were properly recorded and indexed, providing constructive notice to plaintiff. In addition, the court found plaintiff did not object to Husband's encumbering of the Property. It also ruled plaintiff could void the transfer of the interest in the property only to her original 50 percent interest. As a consequence, plaintiff prevailed on her first cause of action for quiet title to that extent; the court dismissed the other causes of action. It found plaintiff was the prevailing party.

Plaintiff filed a memorandum of costs seeking, among other things, attorney fees. She also filed a motion for attorney fees, relying on Code of Civil Procedure sections 1021 and 1032, and Civil Code section 1717 (section 1717). Plaintiff argued the Trust Deeds and the bail bond contracts each had a provision awarding attorney fees. The court denied the motion, explaining plaintiff did not show she was entitled to attorney fees under section 1717 because she was not a party to the contracts on which she relied nor a third party beneficiary thereof.

## **DISCUSSION**

### *1. The Court Did Not Abuse Its Discretion in Ruling Plaintiff was the Prevailing Party.*

Code of Civil Procedure section 1032 provides, "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." A prevailing party is defined as "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." (*Id.*, subd. (a)(4).) None of these pertains to the facts of this case.

Rather, the applicable statutory provision states: “When any party recovers other than monetary relief and in situations other than as specified [in section 1032, subdivision (a)(4), as stated above], the ‘prevailing party’ shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not . . . .” (Code Civ. Proc., § 1032, subd. (a)(4).)

When a party does not fall within the four factors set out in Code of Civil Procedure section 1032, subdivision (a)(4) that automatically qualify a party as prevailing, it is within the trial court’s discretion to decide the prevailing party. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1338, fn. 4.) Thus, we review the issue under an abuse of discretion standard. (*Arias v. Katella Townhouse Homeowners Assn., Inc.* (2005) 127 Cal.App.4th 847, 852.) Rather, “we reverse only if there has been “a clear abuse of discretion” and a “miscarriage of justice.”” (*Chaaban v. Wet Seal, Inc.* (2012) 203 Cal.App.4th 49, 52.) “““When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1124.)

When “determining litigation success, courts should respect substance rather than form, and to this extent should be guided by ‘equitable considerations.’ For example, a party who is denied direct relief on a claim may nonetheless be found to be a prevailing party if it is clear that the party has otherwise achieved its main litigation objective.” (*Hsu v. Abbata* (1995) 9 Cal.4th 863, 877, italics omitted.)

On appeal we must presume the judgment is correct. (*Roberson v. City of Rialto* (2014) 226 Cal.App.4th 1499, 1507.) Because it is the appellants’ burden to show error, they had the duty to provide us with a sufficient trial court record in support of their arguments on appeal. (*Ibid.*) Without that record we do not know what happened during trial and we must affirm the judgment. (*Ibid.*; see *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364 [“if it is not in the record, it did not happen”].)

Defendants contend the court erred in finding plaintiff was the prevailing party because they, not plaintiff, prevailed. Defendants argue that throughout the proceedings their position was the Trust Deeds were enforceable against only one-half of the Property. But they cite to nothing in the record to support this claim.

In our own review of the record, we found a few references in defendants' trial brief stating the Trust Deeds were enforceable as to a 50 percent interest. But there is no reporter's transcript and we have no idea what evidence was presented or arguments made at trial.

Moreover, although plaintiff sought to completely invalidate the trust deeds, she did limit their validity to only a half interest in the Property. This was alternative relief plaintiff sought in her complaint. Therefore, to that extent plaintiff was successful on her claim for quiet title.

Although we might have ruled in defendants' favor, we cannot say the ruling finding plaintiff to be the prevailing party was a clear abuse of discretion or a miscarriage of justice. (*Riverside Sheriff's Assn. v. County of Riverside* (2007) 152 Cal.App.4th 414 424.) Thus, there is no basis to reverse.

## *2. Plaintiff is Not Entitled to Attorney Fees.*

The court ruled plaintiff was not entitled to attorney fees under section 1717 because she failed to show she sued to enforce a contract. Further, she had no standing because she was neither a party nor a third party beneficiary of a contract.

In laying out the issue in her brief, plaintiff in one sentence stated the Trust Deeds contain an attorney fees provision, thus entitling her an award. In her discussion plaintiff repeats this claim, again in one sentence. She mentions that defendants' answer to the complaint asked for attorney fees in the prayer. She then summarily states that although she was not a party to the unidentified "contract" she is entitled to fees by virtue of this request. That is the extent of her argument and it is insufficient.

It violates California Rules of Court, rule 8.204 (a)(1)(B), which requires each issue to be supported by reasoned legal argument and applicable authority. Without such discussion or authority, the argument ““is deemed to be without foundation and requires no discussion.”” (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) “An appellant must provide an argument and legal authority to support [her] contentions. This burden requires more than a mere assertion that the judgment is wrong. . . . It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness.” (*Ibid.*) ““Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.”” (*Ibid.*) Such is the case here.

#### **DISPOSITION**

The judgment is affirmed. The parties shall bear their own respective costs on appeal.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.